

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

UNITED STATES POSTAL SERVICE

and

**AMERICAN POSTAL WORKERS UNION,
PLAYGROUND AREA LOCAL 5643**

Case 15-CA-18859(P)
15-CA-18917(P)
15-CA-19057(P)
15-CA-19238(P)

and

BOBBY CLINE

DECISION AND ORDER

Statement of the Cases

On February 26, 2010, United States Postal Service (the Respondent), American Postal Workers Union, Playground Area Local 5643 (the Local Union), Bobby Cline (Cline), and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act, as amended, and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.¹

¹ Chairman Liebman notes that the remedy to which the parties have agreed is not fully consistent with previous broad orders the Board has issued against the Respondent in cases alleging that the Respondent has violated Sec. 8(a)(5) of the Act by failing and refusing to provide relevant information. See, e.g., *United States Postal Service*, 28-CA-17383 et al., unpublished order issued November 4, 2002, enfd. Case 02-9587 (10th Cir. 2003); and *United States Postal Service*, 345 NLRB 426 (2005), enfd. 486 F.3d 683 (10th Cir. 2007). These broad orders, as enforced by the United States Courts of Appeals,

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following:

Findings of Fact

1. The Employer's business

The Respondent provides postal services for the United States and operates various facilities throughout the United States in the performance of that function, including the facilities located at 175 Main Street in Destin, Florida and 322 Miramar Beach Drive, Miramar Beach, Florida.

The Board has jurisdiction over the Respondent and these matters by virtue of Section 1209 of the Postal Reorganization Act, 39 U.S.C. § 101 et seq. (the PRA).

2. The labor organization involved

The Local Union is a labor organization within the meaning of Section 2(5) of the Act.

ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that:

The Respondent, United States Postal Service, 175 Main Street, Destin, Florida and 322 Miramar Beach Drive, Miramar Beach, Florida, its officers, agents, successors, and assigns shall

remain in effect. However, because all parties have agreed to the terms of this Formal Settlement Stipulation, Chairman Liebman has determined that approval of the parties' settlement will effectuate the purposes of the Act. The Board's approval of this stipulation does not modify these orders in any respect.

Member Schaumber did not participate in *United States Postal Service*, supra, Case 28-CA-17383, and he adheres to the view he expressed in *United States Postal Service*, supra, 345 NLRB at 427 fn. 4 (citing *United States Postal Service*, 345 NLRB 409, 412-415 (2005), *enfd.* as modified 477 F.3d 263 (5th Cir. 2007)), that information request violations are not the type of severe unfair labor practices for which broad orders must be reserved. *NLRB v. Express Publishing Co.*, 312 U.S. 426 (1941) (broad orders must be reserved for egregious cases in which the violations are so severe or so numerous and varied as to truly manifest a general disregard for employees' fundamental employee rights); *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

1. Cease and desist from

(a) Harassing employees because they engaged in union activities, filed unfair labor practice charges with the Board, testified in Board proceedings and/or engaged in other protected, concerted activities for the employees' mutual aid and protection, or to discourage other employees from engaging in such activities.

(b) Telling employees that it is futile for their union representative to request relevant information from the Respondent because the Respondent will just tell the union representative that the information does not exist.

(c) Assigning employees additional duties because they engaged in union activities, filed unfair labor practice charges with the Board, testified in Board proceedings and/or engaged in other protected, concerted activities for the employees' mutual aid and protection, or to discourage other employees from engaging in such activities.

(d) Failing and refusing to bargain in good faith with the exclusive representative of its employees in a unit appropriate for collective bargaining by failing and refusing to furnish the American Postal Workers Union, Playground Area Local 5643 (Local Union), in a timely manner, information requested by the Local Union which is relevant to and necessary for the Local Union's representation of employees.

(e) Failing and refusing to bargain in good faith with the exclusive representative of its employees in a unit appropriate for collective bargaining by failing to notify the Local Union, in a timely manner, that information requested by the Local Union which is relevant to and necessary for the Local Union's representation of employees does not exist.

(f) Failing and refusing to bargain in good faith with the exclusive representative of its employees in a unit appropriate for collective bargaining by failing to notify and bargain in good faith with the Local Union about any proposed changes in wages, hours, and working conditions of employees before putting such changes into effect.

(g) Failing and refusing to bargain in good faith with the exclusive representative of its employees in a unit appropriate for collective bargaining by changing past practices regarding the rotating of volunteers to work holidays without first notifying and bargaining in good faith with the Local Union.

(h) Failing and refusing to bargain in good faith with the exclusive representative of its employees in a unit appropriate for collective bargaining by changing the job functions of employees without first notifying and bargaining in good faith with the Local Union.

(i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, to file charges with or give testimony before the Board, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, rescind the unilateral changes in the terms and conditions of employment of unit employees by informing, in writing, the Local Union that the Respondent will return to the practice of rotating volunteers to work holidays that was in effect prior to the change on October 13, 2008, and continue the practice until either an agreement is reached with the Local Union or a valid impasse.

(b) Cease failing and refusing to bargain in good faith with the exclusive representative of its employees by informing, in writing, the Local Union that it will timely provide it with relevant requested information in the future and that the Local Union may request relevant information from the Respondent.

(c) Within 14 days from the date of the Board's Order, notify, in writing, Bobby Cline that his appointment as the primary employee responsible for ensuring the box mail bar code is scanned by 11:00 a.m. on a daily basis has been rescinded.

(d) Within 14 days from the date of the Board's Order, notify, in writing, Marcus Jackson that his appointment as the alternate employee responsible for ensuring the box mail bar code is scanned by 11:00 a.m. on a daily basis has been rescinded.

(e) Within 14 days from the date of the Board's Order, take the steps necessary to order the Form 50s which have not previously been provided to the Local Union, and upon receipt of the Form 50s immediately provide them to the Local Union, and if any of the requested Form 50s are not available, immediately inform the Local Union of their unavailability.

(f) Make Marcus Jackson whole, with interest, for any loss of pay he may have suffered by reason of the Respondent's failure to rotate volunteers to work holidays according to the past practice that was in effect prior to the change on October 13, 2008, by payment of the amounts set opposite his name:

	<u>Backpay</u>	<u>Interest</u>	<u>Total</u>
Marcus Jackson	\$204.24	\$10.00	\$214.24

(g) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all records necessary to determine that the terms of this Order have been complied with.

(h) Within 14 days of service by the Region, post at its Destin, Florida and Miramar Beach, Florida facilities copies of the attached notice marked "Appendix A." Copies of the notice, on forms provided by Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notice to employees are customarily posted. The Respondent will take reasonable steps to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 1, 2008.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., May 7, 2010.

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

Craig Becker, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

**PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER
AND A CONSENT JUDGMENT OF ANY APPROPRIATE
UNITED STATES COURT OF APPEALS**

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join or assist a union;
Choose representatives to bargain with us on your behalf;
Act together with other employees for your benefit and protection;
Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain or coerce you in regards to the exercise of these rights. More specifically,

WE WILL NOT harass you because you filed charges with the National Labor Relations Board (Board) and/or provided evidence to the Board.

WE WILL NOT harass you because of your activities on behalf of the American Postal Workers Union, AFL-CIO (National Union), American Postal Workers Union, Playground Area Local 5643 (Local Union) or any other labor organization.

WE WILL NOT tell you that it is futile for the Local Union to request information from us because we will just tell the Local Union that the information does not exist.

WE WILL NOT assign you additional duties because you filed charges with the Board and/or provided evidence to the Board.

WE WILL NOT assign you additional duties because of your activities on behalf of the National Union, Local Union, or any other labor organization.

WE WILL NOT refuse to bargain in good faith with the National Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

[A]ll employees in the bargaining unit for which the American Postal Workers Union, AFL-CIO, has been recognized and certified at the national level, excluding managerial and supervisory personnel, professional employees, employees engaged in personnel work in other

than a purely non-confidential clerical capacity, security guards as defined in Public Law 91-375, 1201(2), all Postal Inspection Service Employees, employees in the supplemental work force as defined in Article 7, Rural Letter Carriers, Mail handlers, and Letter carriers.

WE WILL NOT refuse to bargain in good faith with the Local Union as the National Union's designated agent for administering the collective-bargaining agreement at the Employer's Destin, Florida and Miramar Beach, Florida facilities.

WE WILL NOT fail to first meet and bargain in good faith with your Local Union until reaching an agreement or a good faith impasse about any proposed changes in your wages, hours, and working conditions before putting such changes into effect.

WE WILL NOT change our past practices without first notifying and bargaining with your Local Union until either an agreement or a valid impasse is reached.

WE WILL NOT change the job functions of employees without first notifying and bargaining with your Local Union until either an agreement or a valid impasse is reached.

WE WILL NOT fail and refuse to provide the Local Union with requested information that is relevant and necessary to its responsibilities as your collective-bargaining representative.

WE WILL NOT delay in notifying the Local Union that requested information does not exist.

WE WILL NOT delay in providing the Local Union with requested information in our possession.

WE WILL NOT delay in responding to the Local Union's request for information.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, upon request, bargain in good faith with the Local Union as the National Union's designated agent for administering the collective-bargaining agreement at the Destin, Florida and Miramar Beach, Florida facilities.

WE WILL return to the practice of rotating volunteers to work holidays that was in effect prior to the change on October 13, 2008, and continue the practice until either an agreement or a valid impasse is reached with your Local Union.

WE WILL pay Marcus Jackson, with interest, for all losses suffered as a result of our failure to rotate volunteers to work holidays according to the past practice that was in effect prior to the change on October 13, 2008.

WE HAVE rescinded the assignment of making Bobby Cline primarily responsible for ensuring the box mail bar code is scanned by 11:00 a.m. on a daily basis, and **WE WILL** notify him of the rescission.

WE HAVE rescinded the assignment of making Marcus Jackson the alternate employee responsible for ensuring the box mail bar code is scanned by 11:00 a.m. on a daily basis, and **WE WILL** notify him of the rescission.

WE WILL furnish in a timely manner, when requested by the Local Union, information relevant and necessary for it to perform its duties as the National Union's designated agent for administering the collective-bargaining agreement at the Destin, Florida and Miramar Beach, Florida facilities.

WE WILL, in a timely manner, notify the Local Union that requested information is not available because it does not exist.

WE WILL, in a timely manner, provide the Local Union with information it requests that is in our possession.

WE WILL, in a timely manner, respond to the Local Union's request for information.

WE WILL, take the steps necessary to order the Form 50s which have not previously been provided to the Local Union, and upon receipt of the Form 50s immediately provide them to the Local Union. If any of the requested Form 50s are not available, **WE WILL** immediately inform the Local Union of their unavailability.

UNITED STATES POSTAL SERVICE
(Employer)

DATE: _____ BY: _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak

confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov

**600 S. Maestri Place, 7th Floor
New Orleans, LA 70130**

**Telephone: (504) 589-6361
Hours of Operation: 8:00 a.m. to 4:30 p.m.**